

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

INA STEINER, DAVID STEINER, and  
STEINER ASSOCIATES, LLC,

Plaintiffs,

v.

EBAY INC., ET AL.,

Defendants.

CIVIL ACTION NO.: 1:21-CV-11181-PBS

**MOTION TO DISMISS FIRST AMENDED COMPLAINT**  
**BY DEFENDANT BRIAN GILBERT**

Defendant Brian Gilbert moves to dismiss seven of the ten claims brought against him by Ina and David Steiner, and Steiner Associates, LLC (collectively, “Plaintiffs”) in their First Amended Complaint. These seven claims—Count Two (stalking); Count Three (negligent infliction of emotional distress); Count Four (negligence); Count Eight (assault); Count Nine (Massachusetts Civil Rights Act); Count Ten (defamation); and Count Twelve (false imprisonment)—all fail as a matter of law as pled against Gilbert and must be dismissed pursuant to Rule 12(b)(6).

As a general matter, the Complaint indiscriminately brings these seven claims against “all Defendants,” despite a dearth of allegations concerning Gilbert’s role. The Complaint’s shotgun approach to pleading fails to put Gilbert on notice as to how he—as opposed to his co-defendants—is purportedly liable under each cause of action, and therefore fails to satisfy the basic requirement of notice pleading under Rule 8(a). With respect to the specific acts alleged to have been committed *by Gilbert*, the Complaint fails to establish the elements of the seven

claims on which Gilbert moves to dismiss. In support of this Motion, Gilbert relies on his Memorandum of Law filed concurrently herewith.

WHEREFORE, because Plaintiffs have failed to state a claim as a matter of law against Gilbert on seven of their ten causes of action against him, Defendant Gilbert requests that the Court dismiss those claims against Gilbert with prejudice pursuant to Rule 12(b)(6).

Dated: April 21, 2023

/s/ Mark R. Conrad

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Dated: April 21, 2023

/s/ Douglas Brooks

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**LOCAL RULE 7.1(a) CERTIFICATE OF COMPLIANCE**

I hereby certify that the parties met and conferred in a good-faith effort to resolve or narrow the issues raised by this Motion pursuant to Local Rule 7.1(a).

/s/ Mark R. Conrad

Mark R. Conrad

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-participants on April 21, 2023.

*/s/ Douglas Brooks*

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Douglas S. Brooks